

IN THE UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF OREGON  
PORTLAND DIVISION

RICHARD FERRY,

Plaintiff,

No. 3:18-cv-00153-AC

v.

KEVIN DOOHAN, Washington County  
Community Corrections (WCCC) Post-  
Prison Supervision Officer (PPO);  
JOE SIMICH, WCCC, Assistant Director;  
STEVE BERGER, WCCC, Director;  
MICHAEL WU, Oregon Board of Parole  
and Post-Prison Supervision (BPPPS)  
Chair; BROOKE VICE, WCCC PPO;  
NELLIE McDONALD, WCCC PPO; and  
JOHN and JANE DOES 1-20,

Defendants.

ORDER

HERNÁNDEZ, District Judge:

Magistrate Judge Acosta issued a Findings and Recommendation [40] on August 13, 2018, in which he recommends that County Defendants'<sup>1</sup> Motion to Dismiss be granted in part

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<sup>1</sup> County Defendants include Kevin Doohan, Joe Simich, Steve Berger, Brooke Vice, And Nellie McDonald.

and denied in part. Judge Acosta also recommends that Defendant Wu's Motion for Summary Judgment be granted. The matter is now before the Court pursuant to 28 U.S.C. § 636(b)(1) and Federal Rule of Civil Procedure 72(b).

When any party objects to any portion of the Magistrate Judge's Findings and Recommendation, the district court must make a *de novo* determination of that portion of the Magistrate Judge's report. 28 U.S.C. § 636(b)(1); *Dawson v. Marshall*, 561 F.3d 930, 932 (9th Cir. 2009); *United States v. Reyna-Tapia*, 328 F.3d 1114, 1121 (9th Cir. 2003) (en banc). Defendants filed timely objections to the Magistrate Judge's Findings and Recommendation. Defs.' Obj., ECF 45. The Court has carefully considered Defendants' objections and concludes that the objections do not provide a basis to modify the recommendation.

The Court notes that Defendants raised two issues in their objections that were not briefed, as they relate to Plaintiff's remaining claim of retaliation, before Judge Acosta. These issues are whether Defendants are entitled to qualified immunity and whether defendants Vice and Doohan should be dismissed from the case. The Court declines to address these issues for the first time on review, and leaves them for the parties to raise, and the Magistrate Judge to resolve, at a later date. *See Brown v. Roe*, 279 F.3d 742, 745–46 (9th Cir. 2002) (rejecting the Fourth Circuit's holding that a district court must consider new arguments raised for the first time in an objection to a magistrate judge's F&R); *United States v. Howell*, 231 F.3d 615, 622 (9th Cir. 2000) (district courts have discretion to consider new evidence raised for the first time in an objection to a magistrate judge's F&R); *Olmos v. Ryan*, No. CV–11–00344–PHX–GMS, 2013 WL 3199831, at \*8 (D. Ariz. June 24, 2013) (“Generally, a district court need not consider new arguments raised for the first time in objections to an R & R.”).

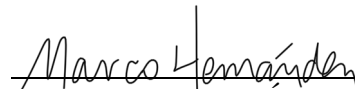
The Court has also reviewed the pertinent portions of the record *de novo* and finds no additional error in the Magistrate Judge's Findings and Recommendation.

#### CONCLUSION

The Court ADOPTS Magistrate Judge Acosta's Findings and Recommendation [40]. Defendants' Motion to Dismiss [25] is granted in part and denied in part, consistent with Judge Acosta's recommendations. Defendant Wu's Motion for Summary Judgment [28] is granted, consistent with Judge Acosta's recommendations. Plaintiff is ordered to show cause why his claims against Defendants John and Jane Does, 1-20, should not be dismissed.

IT IS SO ORDERED.

DATED this 3 day of January, 2018

  
MARCO A. HERNÁNDEZ  
United States District Judge